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Chair: Ms. Janina

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Honduras (CED/C/HND/1; CED/C/HND/Q/1 and CED/C/HND/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Honduras took places at the Committee table.*

2. **Ms. Cueva** (Honduras), introducing the initial report of Honduras (CED/C/HND/1), said that her delegation looked forward to engaging in a frank and open dialogue with the Committee in order to identify areas of progress and remaining challenges in her country's implementation of the Convention. In recent years Honduras had hosted visits by a number of United Nations special rapporteurs and other high-level representatives dealing with human rights issues and had cleared its backlog of reports due for submission to the treaty bodies. She wished to acknowledge the contribution of civil society to the preparation of the initial report at hand.

3. Measures to combat organized crime and drug trafficking in Honduras had halved homicide rates between 2011 and 2017. Those measures included sustained efforts by security institutions and structural reform of the justice sector. A number of human rights bodies had been established, including, most recently, the Ministry of Human Rights, Justice, Governance and Decentralization and the Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials. The latter office had an initial budget of some US$ 800,000 and its staff included five specialized investigators. Moreover, five additional investigators had been assigned to the Office of the Special Prosecutor for Human Rights.

4. On the legislative front, the 2012 amendment of the Criminal Code through the addition of article 333-A incorporated elements of articles 2, 5 and 7 of the Convention and provided for the prosecution of crimes relating to enforced disappearance. The National Congress was reviewing an array of draft legislation covering issues such as adoption, DNA identification, measures to trace women who had gone missing, and reparations; if passed, those texts would further strengthen the implementation of the Convention in Honduras.

5. The ranks of prosecutors in the Public Prosecution Service had more than doubled since 2013 and the Service's investigative capacity had been strengthened through the creation of specialized units. In particular, its Technical Criminal Investigation Agency, founded in 2014, now commanded a budget of US$ 6.4 million.

6. In order to ensure that allegations of enforced disappearance were investigated impartially and independently by the civilian authorities, the Constitution prohibited the use of military courts to try non-military offences. When a crime was believed to have been committed by police or military personnel, members of those forces were not allowed to participate in the investigation conducted by the Public Prosecution Service, and the suspects concerned could be removed from their functions to prevent any interference with the investigation.

7. The Public Prosecution Service was investigating 164 cases of alleged enforced disappearance, including some dating from before the Criminal Code had entered into force. The case of Juan Humberto Sánchez, which dated back more than 28 years, had been reopened; as a result, the victim had been identified, charges had been filed and oral proceedings would begin in August 2018. Investigations into the case of Donatilo Jiménez had revealed that the perpetrators had been members of an organized criminal group acting without any State involvement. In the case of Norma Yolanda Hernández López, a warrant had been issued for the arrest of a suspect, and its execution was pending. The case of Manuel de Jesús Bautista was still under investigation.

8. Regarding a claim in a shadow report that the annual reports of the Office of the National Commissioner for Human Rights did not provide information on the follow-up to reports of enforced disappearance, she said that that body had reported that, out of the 71

cases opened in 2015, 2016 and 2017 to investigate allegations of enforced disappearance, only one had been found to involve State agents.

9. Regarding paragraph 9 (b) of the list of issues (CED/C/HND/Q/1), which concerned requests for extradition in cases involving allegations of enforced disappearance, the Ministry of Foreign Affairs and International Cooperation had confirmed that it had no record of any such requests.

10. Regarding mechanisms for protecting human rights defenders, she said that the National Protection System currently protected more than 211 people, including 3 human rights defenders who worked with victims of enforced disappearance.

11. The National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment had access to all places of detention and had in recent years made more than 400 visits, most of them unannounced, to such places. In 2017 it had provided relevant training to 657 public servants and persons deprived of liberty. In addition, the curricula for the training of members of the armed forces and the police now included training on human rights and on topics such as community policing and criminal investigation.

12. As for clandestine graves, 123 of the 1,403 exhumations carried out by the Forensic Medicine Department between 2004 and 2018 had corresponded to such graves. Since 2015 the Violent Death Unit of Bajo Aguán had carried out 81 exhumations, 31 of which had resulted in judicial proceedings.

13. To tackle the issue of the disappearance of Honduran migrants heading for the United States of America, her country had signed the Inter-Institutional Cooperation Agreement on the Establishment of Mechanisms for the Exchange of Information on Untraced Migrants and Unidentified Bodies. A total of 440 cases had been registered and the remains of 36 Hondurans had been identified. Under the Act on the Protection of Honduran Migrants and Members of Their Families, a fund had been established to assist migrants, including with the repatriation of the remains of Hondurans who had died abroad.

14. To protect children from trafficking and irregular adoption, DNA samples had been taken from 469 children in 2017. Legislation on the "AMBER Alert" system for tracing and protecting missing children provided for the transmission of public alerts in such cases and the establishment of a national coordinating committee.

15. **Mr. Huhle** (Country Rapporteur) said that, while enforced disappearances remained a major issue in Honduras, the State party was setting a good example for the region by allowing external scrutiny of its efforts to combat the problem. Regarding the indication, in the State party's replies to the list of issues (CED/C/HND/Q/1/Add.1), that making the declarations provided for in articles 31 and 32 of the Convention would lead to duplication of functions under different procedures, he said that it was important for victims to have more than one avenue for recourse.

16. He asked whether there had been any recent developments regarding the investigation and prosecution of persons and groups acting without State authorization and whether fresh statistics were available from the Office of the National Commissioner for Human Rights, which maintained a register of cases of enforced disappearance. What did the Office and other State institutions do with the information in the register? Did the registration of a new case ever result in an immediate search for the missing person? He would also welcome relevant statistics collected by other State entities, and would like to know whether there was a consolidated register and whether statistics from different entities underwent a comparative analysis. He also asked for information on the number and current status of any investigations conducted in response to reported cases of enforced disappearance.

17. The statement, in paragraph 9 of the replies to the list of issues, that only one case of enforced disappearance dated from before 2010 contrasted starkly with information from other sources. Given the prominent cases handled by the Inter-American Court of Human Rights in preceding decades, and the resulting rulings, he wondered whether that statement was accurate.

18. The information provided by the State party about various instruments, institutions and mechanisms for tracing migrants who had gone missing was inadequate. The State party was requested to provide comprehensive information on the functions and areas of competence of each entity and on how each was connected with the Honduran State. It should also provide a comprehensive overview of cooperation between Honduras and Mexico to locate missing persons and prosecute alleged perpetrators of enforced disappearance. Perhaps the Mexican institutions that had recently been established for those purposes could serve as models for Honduras to follow in setting up more effective bodies of its own.

19. He wished to know whether investigations had been conducted into the possibility that State agents had been involved in the ill-treatment or enforced disappearance of migrants. He was concerned about reports suggesting that the participation of certain branches of the security forces in investigations into alleged cases of enforced disappearance might amount to a violation of article 12 (4) of the Convention. In addition to the mechanisms that had been established for the purpose of finding the mortal remains of victims of enforced disappearance, he hoped the delegation could provide details about any mechanisms specifically intended to search for living persons.

20. **Ms. Galvis Patiño** (Country Rapporteur) said that she was pleased to learn that the new Criminal Code had been adopted. She wished to know whether the definition of enforced disappearance contained in article 333-A of the 2012 Code had been maintained unaltered in the new text. She understood that the phrase "thereby limiting or denying their recourse to the applicable constitutional and procedural guarantees", contained in that article, was to be interpreted as a consequence of the criminal act, and she would be interested to know whether and how that provision had been interpreted by the courts. Had civil society been consulted during the process of drafting the new Criminal Code and, if so, in what way?

21. She asked whether the provisions of the new Criminal Code addressing criminal acts carried out with the "authorization, support or acquiescence" of a public official adequately reflected the prerequisites defining the criminal responsibility of superiors contained in article 6 (1) (b) of the Convention. She would like to know whether concealment, which was apparently a separate offence under the Criminal Code, had ever come before the courts in a case of enforced disappearance. Could the delegation assure the Committee that provisions prohibiting the invocation of superior orders as a justification for enforced disappearance were consistent with article 6 (2) of the Convention?

22. The Committee would like to know whether the new Criminal Code provided for increased penalties for perpetrators of enforced disappearance and whether such penalties corresponded to those for the most serious offences. She had been happy to learn that the Code made allowance for the mitigating and aggravating circumstances stipulated under article 7 (2) of the Convention; however, she wished to know what guarantees were in place to ensure that the Public Prosecution Service's authority not to bring criminal proceedings against suspects who cooperated in an investigation did not become an obstacle to the prosecution of cases of enforced disappearance. She sought assurances from the delegation that the new Criminal Code duly categorized enforced disappearance as a continuous crime which, in accordance with articles 8 and 24 of the Convention, did not cease until the victim had been discovered, either alive or dead.

23. The State party had reported that it was in the process of investigating 164 cases of enforced disappearance; however, according to information available to the Committee, around 200 cases had been reported since the 1980s. She would be interested to hear how the delegation accounted for that disparity. What measures were taken to ensure that the retroactive application of the definition of enforced disappearance to acts that had occurred in the past was consistent with the continuous nature of the offence?

24. The Committee would be interested to learn more about a series of amnesties that had been declared since the late 1980s and, in particular, whether they had ever been applied to persons implicated in cases of enforced disappearance. She hoped the delegation could comment on reports that neither the Public Prosecution Service nor the Office of the National Commissioner for Human Rights dealt with cases of Honduran nationals who

went missing outside the country. The Committee shared the concerns expressed by the Inter-American Commission on Human Rights that the law regulating the activity of the military police did not sufficiently guarantee the independence and impartiality of prosecutors and judges who investigated alleged human rights violations committed by military police personnel. In that regard, she would be interested to know whether there were any plans to bring domestic law into line with article 11 of the Convention.

25. **Mr. Teraya** said that he too was concerned that the provision whereby the Public Prosecution Service could refrain from bringing criminal proceedings if a suspect cooperated with investigators could amount to a legal loophole, which perpetrators of enforced disappearance might exploit to escape punishment. In that regard, he would be interested to hear about any plea-bargaining arrangements that existed within the domestic legal system.

26. **Mr. Figallo Rivadeneyra** said that he shared the concern expressed by Ms. Galvis Patiño. The three prerequisites defining the criminal responsibility of superiors, which were very precisely detailed in article 6 (1) (b) of the Convention, did not seem to be adequately encompassed by the concept of "acquiescence" referred to in article 333-A of the Criminal Code. He would be interested to know whether the new Criminal Code explicitly defined enforced disappearance as a crime against humanity.

27. **Mr. Baati** said that the process of drafting the new Criminal Code seemed to have taken a very long time. He would appreciate it if the delegation could explain what difficulties had been encountered that could account for such a delay. Had those difficulties been related in any way to the Convention or to the definition of enforced disappearance as a crime against humanity?

The meeting was suspended at 3.55 p.m. and resumed at 4.25 p.m.

28. **Ms. Alvarado** (Honduras) said that the Public Prosecution Service remained committed to ensuring that no case of enforced disappearance went unpunished. Of the 164 cases of enforced disappearance currently being investigated by the authorities, 83 per cent of the victims were male and 17 per cent were female. The majority were Hondurans, but some of the victims were nationals of other Central and South American countries. In some cases, their identity was still unknown. The discrepancy between the figure of 164 and the 184 cases reported by the Office of the National Commissioner for Human Rights might be due to the fact that some cases had been registered not as enforced disappearance, but as other offences. Reports received by the National Commissioner for Human Rights were referred to the Office of the Special Prosecutor for Human Rights. With regard to the statement, in the written replies, that one case of disappearance dated from before 2010, she said that the case in question remained open because the authorities were conducting criminal proceedings in the interest of preventing impunity.

29. Although the courts had never had occasion to consider concealment in the context of a case of enforced disappearance, there was nothing to prevent them from doing so if, for example, it emerged that one State official was covering up for another. Cases in which agents of the State were accused of human rights abuses were handled by specialized prosecutors within the Public Prosecution Service. Such cases were conducted and investigated in the same way as other cases, and with the same guarantees of independence and impartiality. Suspects enjoyed no privileges on the grounds that they were State officials.

30. The legal definition of enforced disappearance as a continuous crime was in line with the Inter-American Convention on Forced Disappearance of Persons. Application of the provision whereby the penalty for enforced disappearance could be mitigated if the perpetrator cooperated with investigators would require the approval of the Attorney General. In any case, it had never been used in practice. All cases of enforced disappearance were investigated, irrespective of whether or not the alleged perpetrator was a State official. As soon as a person was reported missing, the same investigative protocols were followed, which included inquiries with the missing person's relatives, social media alerts and checks at border crossings.

31. The responsibility of superiors in cases of enforced disappearance was clearly defined in the current Criminal Code and in the amended version of the Code that had recently been adopted. Cases had in fact been brought against high-ranking police officials for orders they had issued to subordinates. There was no special protocol for cases of enforced disappearance, but a handbook had been developed detailing unified protocols to be followed by investigators — whether from the Public Prosecution Service, the Ministry of Security or the Technical Criminal Investigation Agency — in all cases, including those of enforced disappearance.

32. **Ms. Villanueva** (Honduras) said that before 2010, Honduras had lacked the mechanisms and technical means to search for missing persons, including migrants, in an orderly and systematic manner. Since then, however, the Government had partnered with other countries and international organizations with a view to tracing and repatriating Hondurans who had gone missing on the migration route to the United States. For example, it had been working with the Argentine Forensic Anthropology Team on a project to develop a forensic data bank — which already contained 440 genetic profiles, including those of 323 men, 100 women and 17 individuals whose sex was unknown — that was nearing completion. Cooperation had been established with the forensic institutions of the other Northern Triangle countries of Central America, while new technologies, such as equipment for the operation of the Automated Fingerprint Identification System (AFIS), had been donated by the United States. The Public Prosecution Service was seeking certification by the International Organization for Standardization as part of a drive to ensure that the forensic services of all Central American countries, Mexico and the United States observed the same quality standards. In 2015, the Forensic Medicine Department had embarked on a modernization process and now applied cutting-edge technologies in areas such as dactyloscopy, genetics, anthropology and odontology. Although in the past the authorities had not had the capacity to obtain genetic profiles from skeletal remains and had resorted to sending them abroad for analysis, the Government had now acquired DNA sequencers, leading to the successful identification of remains in the case of Juan Humberto Sánchez. The new technology also meant that remains stored by the Forensic Medicine Department could be compared with data provided by the families of missing persons.

33. All of the Central American countries worked with the International Committee of the Red Cross (ICRC), which had provided them with a database to promote the standardized application of universal forensic concepts. Furthermore, an interdisciplinary group comprising the families of missing persons, ICRC, ministries and the Forensic Medicine Department of the Public Prosecution Service had been set up to review missing persons cases in the context of migration and to share information with authorities in other countries. Part of its work was to determine whether the deaths of Honduran nationals along the migration route had been violent and required further investigation. The Government also chaired a council of Central American forensic institutions and maintained direct relations with the Government of the United States, the United States Border Patrol, the University of Texas and the University of Arizona. Its participation in regional partnerships was yielding positive outcomes in the search for missing persons.

34. **Ms. Cueva** (Honduras) said that in 2014, following the adoption of the Act on the Protection of Honduran Migrants and Members of Their Families, the Government had established a department for the protection of migrants within the Ministry of Foreign Affairs, as well as a National Council for the Protection of Honduran Migrants.

35. To enhance search efforts for Honduran nationals in Guatemala, Mexico and the United States, the Government had strengthened its consular network and had developed a mechanism consisting of actions to be carried out in coordination with other countries in the hours and days after a person was first reported missing. The Mexican Government had established a crime investigation unit for migrants and an external search and investigation support mechanism to which Honduran families could submit missing person reports, either directly or through the Mexican embassy in Honduras. In Guatemala, the Honduran authorities worked in close cooperation with ICRC and with the National Institute of Forensic Sciences of Guatemala, which performed database checks on unidentified interred remains. In the United States, the Government of Honduras received support from the Colibrí Center for Human Rights and the University of North Texas Center for Human

Identification. Moreover, recognizing that the Criminal Code focused on the punishment of perpetrators and that there was a need for greater emphasis on the protection of victims, the Government had developed special regulations for that purpose as part of the process of drafting the new Code, drawing on inputs from civil society.

36. **Mr. Velásquez** (Honduras) said that public institutions had been strengthened with a view to the correct administration of justice and that the National Congress had drafted specific laws to protect the human rights of children, young people and women. The process of drafting the new Criminal Code had begun with the formation of a special multipartisan committee that had held a dialogue with all sectors of society, including the Committee of the Families of Detained and Disappeared Persons in Honduras and the Office of the National Commissioner for Human Rights. The Government had held consultations throughout the country, including in cities such as San Pedro Sula, Choluteca and La Ceiba. The resulting draft had been reviewed article by article by the National Congress and was now ready for publication. In particular, under article 140, anyone who committed the crime of enforced disappearance was punishable by 15 to 20 years' imprisonment; under article 139, when the crime was carried out systematically and thus constituted a crime against humanity, the perpetrator was punishable by 30 years' to life imprisonment, accompanied by suspension of citizenship and general disqualification for the duration of the sentence. Article 153 provided that superiors who were held criminally responsible should receive the same punishment as the direct perpetrator of the act.

37. **Mr. Huhle** said that he was grateful for the clarification that the reference, in the State party's written replies, to a single instance of enforced disappearance prior to 2010 related only to cases that were still being investigated or prosecuted by the Public Prosecution Service. He was interested to know more about the number and status of the other cases that had occurred prior to 2010. Had the Public Prosecution Service clarified the fate of the individuals in question? He asked the State party to provide consolidated information on the number of cases of disappearance, not just the number of investigations, recorded both before and after the entry into force of the Convention.

38. Concerning the search protocols developed by the State party, he would appreciate receiving more detailed information in writing. However, given that the protocols described by the delegation seemed to refer exclusively to human remains, he was curious to know whether the State party had any protocols for finding people who were still alive. He would also welcome details about any joint initiatives undertaken for that purpose with the authorities of Guatemala, Mexico and the United States.

39. **Ms. Galvis Patiño** said that it would be helpful if the delegation could provide the Committee with a copy of the new text of the Criminal Code. She would appreciate further information on the provisions of the Code that related to the responsibility of superiors for crimes of enforced disappearance. In particular, it was unclear what distinction was made between public officials who gave orders resulting in a crime of enforced disappearance and those who implemented those orders, and in what circumstances a superior could be held responsible for such a crime. Although the State party's report (CED/C/HND/1) mentioned its ratification of the Rome Statute of the International Criminal Court as evidence of its compliance with the Convention, that instrument concerned crimes against humanity, a category that included some but not all cases of enforced disappearance, and its provisions on the responsibility of commanders and other superiors differed from the corresponding provisions of the Convention.

40. As had been noted by the Inter-American Commission on Human Rights, the institutional framework governing the activities of the prosecutors and judges who oversaw the military police seemed to undermine their independence and impartiality, as those prosecutors and judges also had the power to try cases involving military police personnel. In that connection, she wondered what measures had been taken to avoid such conflicts of interest and whether a review of the existing institutional framework had been carried out.

41. **Mr. Ayat** said that he wished to urge the State party to ensure that article 6 of the Convention, which set out clearly the circumstances in which a superior bore responsibility for a crime of enforced disappearance, was fully incorporated into national law. The provisions in question served to prevent impunity and also had a pedagogical purpose. It

should be recalled that crimes of enforced disappearance were often attributable to superiors acting through their subordinates. On a separate point, he noted that the definition of the term "victim" in article 17 of the Code of Criminal Procedure was narrower than the one in article 24 of the Convention, as it excluded certain categories of people if the offence in question had not resulted in loss of life. The legal definition of "reparation" was also narrower than the one in article 24. Lastly, the widespread or systematic practice of enforced disappearance should be identified in national law as a crime against humanity.

42. **Mr. Lara Watson** (Honduras) said that article 140 of the new text of the Criminal Code was a slightly condensed version of article 333-A. It provided that a public official or employee who committed the offence of enforced disappearance was punishable by 15 to 20 years' imprisonment, suspension of citizenship and general disqualification for a period of 20 to 25 years. Under article 153, the same penalties were applicable to authorities, military commanders or persons effectively acting as military commanders who failed to take all necessary and reasonable measures within their power to prevent the commission of such an offence by forces under their command, effective control or authority, and to other superiors who, within their area of responsibility, failed to take measures within their power to prevent the commission of such an offence by their subordinates. The same penalties, reduced by either one third or two thirds, were applicable to military commanders or superiors, or public officials or employees, who failed to take measures within their power to ensure the prosecution of such offences when committed by persons under their command, effective control or authority.

43. A copy of the new text of the Criminal Code would be made available to the Committee. With regard to aggravating and mitigating circumstances, it should be noted that, pursuant to article 69 of the Criminal Code, judges determined the applicable penalty within the boundaries of the maximum and minimum penalties specified by law for a particular offence. Judges took into account various circumstances, including the personal history of the offender, the danger that he or she posed and any aggravating or mitigating circumstances.

44. **Ms. Alvarado** (Honduras) said that the National Inter-Agency Security Force had been established under the Public Prosecution Service to operate on a temporary basis. It was made up of certified prosecutors and judges who were independent of the military police. They represented and defended the interests of Honduran society, respected the principles of impartiality and objectivity enshrined in national law and were monitored by the Public Prosecution Service. The Security Force handled all cases of violent deaths involving law enforcement officials.

45. The Office of the Special Prosecutor for Human Rights, which reported to the Public Prosecution Service, had a dedicated enforced disappearance unit. The establishment of the unit had made it possible for certain prosecutors to specialize in cases of enforced disappearance.

46. With regard to the total number of recorded cases of enforced disappearance, there seemed to be a discrepancy between the statistics made available to the Committee and those held by the Office of the Special Prosecutor for Human Rights. According to that Office, there had been 163 cases of enforced disappearance in the 1980s and 1990s and 1 case in December 2017. The latter case had been the first recorded since the entry into force of article 333-A of the Criminal Code. Before the offence of enforced disappearance of persons had been established, there had been no unified procedure for registering such cases. The Public Prosecution Service maintained a register of cases of enforced disappearance, and efforts would be made to clarify the discrepancy between the two sets of statistics.

47. **Ms. Villanueva** (Honduras) said that, with regard to search protocols, significant efforts had been made since 2010 to improve the organization of data on disappeared persons. Various stakeholders, including the families of such persons, the police force, the Forensic Medicine Department of the Public Prosecution Service and ICRC, were working in cooperation to ensure that all relevant data were held in one place. Recent years had seen a number of developments, including institutional transformations, the introduction of advanced forensic medicine techniques and capacity-building conducted in association with

ICRC. Those developments had given rise to much discussion of the question of which body should have overall responsibility for ante-mortem data, which were based on interviews with victims' family members and could not be separated from post-mortem data. Cooperation at the regional level was facilitating the development of a dedicated national platform compatible with the international platform.

48. **Mr. Lara Watson** (Honduras), responding to the question on the definition of the term "victim", cited the case of six university students who had disappeared in the 1980s and had subsequently been found alive. In that case, the persons deemed eligible for compensation had been determined in line with the criteria used in a number of Inter-American Court of Human Rights rulings.

The meeting rose at 5.45 p.m.